

SENATE NO. 955

AN ACT ESTABLISHING THE MEDICAL INJURY COURT DEPARTMENT OF THE TRIAL COURT OF THE COMMONWEALTH

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. SECTION 1. Findings.

2 The general court finds that:

3 (1) the current medical litigation process is inconsistent, inefficient and unfair; creating an
4 adversarial environment that discourages the open communication required to improve patient
5 safety;

6 (2) comprehensive reform is needed to redress the many failings of the current medical liability
7 system in promoting quality care, resolving medical injury cases, and compensating injured
8 patients;

9 (3) it is the public policy of the commonwealth that improving health care quality and
10 enhancing patient safety are goals that are in the interests of both patients and health care
11 providers;

12 (4) the impact of medical litigation on health care quality initiatives creates a compelling need
13 for law, rules, and procedures to improve the process by which medical injury cases are
14 resolved; and

(5) health courts represent an alternative for reform that can result in predictable justice for patients and physicians alike, as well as a rapid resolution of claims and assessment of damages;

SECTION 2. Section 1 of Chapter 211B of the general laws, as appearing in the 2004 Official Edition is hereby amended by inserting after the words, “juvenile court department,” the words: - “medical injury court department.”

SECTION 3. Said chapter 211B is hereby further amended in section 2, by inserting after the words, “juvenile court department,” the words: - “3 justices appointed to the medical injury court department.”

SECTION 4. The general laws, as appearing in the 2004 Official Edition, are hereby amended, by inserting after chapter 185C, the following new chapter: -

Chapter 185D. Medical Injury Court Division

Section 1. The medical injury court department, established under section 1 of chapter 211B. Wherever the words “medical injury court” are used, or wherever in this chapter the word “court” is used in that context, they shall refer to the medical injury court department; and the words “judge of the medical injury court” or the word “judge”, in context, shall mean an associate justice of the trial court appointed to the department of the medical injury court department.

The medical injury court shall have jurisdiction over all medical professional liability claims, for which adequate notice of rights has been provided to patients pursuant to section 4 arising out of health care services provided by any health care provider or at any health care facility in the commonwealth . Notwithstanding the foregoing, claims where total damages do not exceed \$5,000 shall remain within the jurisdiction of the existing court system.

(a) A patient’s agreement to be treated by a covered health care provider at a health care facility in Massachusetts shall constitute consent to be bound by this chapter respecting any claim that may

38 arise relating to medical injury incident to the treatment, provided that the following notice
39 provisions are satisfied:

40 (1) Health care providers shall inform existing patients by mail of the provisions of this
41 chapter, explaining the patient's rights, within 60 days of the organization of the medical
42 injury court.

43 (2) Health insurers subject to regulation by the division of insurance shall inform their
44 subscribers of this chapter. The health insurer shall furnish the patient with a written notice
45 at the time of execution of the initial contract for insurance coverage, and at each contract
46 renewal, explaining the patient's rights under the medical injury court.

47 (3) A notice concerning practices and rights with respect to this chapter shall be displayed
48 prominently in any provider's place of business.

49 (4) At the time of a patient's first medical consultation with a health care provider, the
50 provider shall furnish the patient with a written notice of practices and rights with respect to
51 this chapter.

52 The following words and phrases when used in this chapter shall have the following meanings
53 unless the context clearly indicates otherwise:

54 "Avoidable medical injury", a medical adverse event that would not have resulted if care had
55 been delivered in a manner consistent with that of an experienced practitioner or specialist in the
56 relevant clinical area. In making the determination of avoidability, the lack or presence of local
57 or regional resources may be taken into account.

58 "Accelerated compensation event", an avoidable medical injury that fits within a predetermined
59 list of such events that has been developed by the department of public health pursuant to
60 section 6.

61 "Health care", care, service, or procedure provided by a health care provider:

62 (1) to diagnose, treat, or maintain a patient's physical or mental condition, or

63 (2) that affects the structure or any function of the human body. Labor and delivery,

64 whether complicated or uncomplicated, shall be included in this definition.

65 "Health care facility", a hospital, clinic, office, or similar place, where a health care provider
66 provides health care to patients. It shall not mean a nursing or convalescent home or institution.

67 "Health care information", information, whether oral or recorded in a form or medium that
68 identifies or can readily be associated with the identity of a patient and relates to the patient's
69 health care. The term shall include a record of disclosures of health care information.

70 "Health care provider", a person who is licensed, certified, or otherwise authorized by law of the
71 commonwealth to provide health care in the ordinary course of business or practice of a
72 profession. The term shall not include a person who provides health care solely through the sale
73 or dispensing of drugs or medical devices. The term also includes the following:

74 (1) an officer, employee, or agent of a health care provider acting within the scope of the
75 person's duties and authority, and

76 (2) a legal entity through which 1 or more health care providers deliver health care,
77 including, but not limited to, a professional corporation, a partnership, or limited liability
78 company.

79 "Hospital", an institution where sick or injured patients are provided medical care and which is
80 operated in accordance with the laws of the jurisdiction in which it is located pertaining to
81 institutions identified as hospitals, and which is primarily engaged in providing to patients on an
82 inpatient basis diagnostic and therapeutic facilities for surgical or medical diagnosis, treatment,
83 or care of injured or sick persons by or under the supervision of a staff of duly licensed doctors

of medicine, and which is not, other than incidentally, a nursing or convalescent home or institution.

"Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

"Medical adverse event", an incident in which harm has resulted to a person receiving health care services.

"Medical professional liability claim", a claim brought by or on behalf of an individual seeking damages for loss sustained by the individual as a result of an injury or wrong to the individual or another individual arising from a health care provider's provision of or failure to provide health care regardless of the theory of liability. A medical professional liability claim includes, but shall not be limited to, a claim grounded in negligence, informed consent, breach of contract, misrepresentation or fraud. It does not include an action at law for claims of sexual misconduct, wanton or willful acts with intent to harm the patient, criminal offenses, premises liability for injuries not occurring in connection with health care, product liability against a manufacturer or distributor, or liability for wrongful denial of coverage by a health insurer.

"Medical injury court", the court established by section 2.

"Medical injury court rule", a rule or order promulgated under the medical injury court.

"Medical professional liability claim review panel", the hospital-based review panel established by section 11.

"Patient", an individual who receives or has received health care. The term includes a deceased individual who has received health care. The term includes both newborn and stillborn infants.

"Person", an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(b) The department of public health, with the approval of the chief justice of the medical injury court, shall promulgate a suggested form of the notice to patients, which health care providers and health insurers may adapt so long as the following elements are contained in the notice:

(1) A description of the medical injury court system,

(2) A basic description of claims and appeals processes.

(3) Information on where further information about the program may be obtained.

Section 2. The medical injury court department shall have superior and general jurisdiction with reference to all cases and matters within their jurisdiction; and no order, decree, judgment, sentence, warrant, writ or process made, issued or pronounced by them need set out any adjudication or circumstances with greater particularity than would be required in other departments of superior and general jurisdiction, and the like presumption shall be made in favor of proceedings in the medical injury court department as would be made in favor of proceedings in other departments of superior and general jurisdiction. Writs, subpoenas, citations, orders, notices, executions and all other processes issued in the medical injury court department signed by the clerk, temporary clerk or an assistant clerk, and bear the teste of chief justice of the department and shall run throughout the commonwealth.

Section 3. The medical injury court department shall have common law and statutory jurisdiction, including all contract and tort actions which affect the health, safety and welfare and shall also have jurisdiction in equity, concurrent with the divisions of the district court department, the divisions of

127 the probate and family court department, the superior court department, the appeals court, and the
128 supreme judicial court, of all cases and matters so arising.

129 In all matters within its jurisdiction, the medical injury court department shall have all the powers of
130 the superior court department including the power to grant temporary restraining orders and
131 preliminary injunctions as justice and equity may require. The department shall have like power and
132 authority for enforcing orders, sentences and judgments made or pronounced in the exercise of any
133 jurisdiction vested in them, and for punishing contempts of such orders, sentences and judgments
134 and other contempts of their authority, as are vested for such or similar purposes in the supreme
135 judicial court or superior court department.

136 Section 4. The medical injury court department shall hold its sittings in the city of Worcester in
137 Worcester county on property of the University of Massachusetts Medical School. The court, with
138 the consent of the chief administrative justice and management shall also sit in such other
139 courthouse facilities as the chief justice of the medical injury court department may deem to be
140 expedient or convenient.

141 Section 5. The medical injury court department shall always be open and the business thereof, or of
142 a justice thereof, may be transacted at any time; but such business shall not, except as provided in
143 section six of chapter two hundred and twenty, be transacted on Saturday or Sunday or on a legal
144 holiday unless it relates to an application which, in the opinion of the justice to whom it is made, is
145 of pressing necessity; provided, however, that, if the convenience of the public so requires, the
146 courts shall be open for the transaction of business on such Saturdays, not legal holidays, and
147 during such hours thereof as the chief justice of the medical injury court department may determine.

148 Section 6. The medical injury court department shall have a seal which will be in the custody of its
149 clerk, and shall be affixed to all processes issued by the medical injury court department requiring a
150 seal.

151 Section 7. The chief justice of the medical injury court department shall from time to time make
152 general rules and forms of procedure, which, before taking effect, shall be approved by the supreme
153 judicial court or a justice thereof.

154 Section 8. There shall be three justices appointed for the medical injury court department who shall
155 be and perform the duties of a circuit justice in such counties as the chief justice shall from time to
156 time designate. The justice as provided under section one of chapter two hundred and eleven B as
157 the chief justice for the medical injury court department, in addition to his judicial powers and
158 duties shall, subject to the superintendence authority of the supreme judicial court provided in
159 section three of chapter two hundred and eleven B, and subject to the administrative authority of the
160 chief justice of administration and management, be the administrative head of the medical injury
161 court department, and shall also have the power, authority and responsibility of a chief justice as set
162 forth in section ten of chapter two hundred and eleven B. Said chief justice shall serve as the chief
163 justice of that department for a five-year term and shall be eligible to be reappointed to serve
164 additional five-year terms. Said chief justice may be removed from his position as chief justice
165 when it is determined by the chief justice for administration and management to be in the best
166 interests of the administration of justice.

167 Section 9. There shall be a clerk, appointed by the governor with the advice and consent of the
168 council, for the medical injury court. Said clerk shall hold office during good behavior, subject
169 however, to retirement under the provisions of any general or special law relative to retirement
170 systems. Said clerk shall have responsibility for the internal administration of his office, including

171 the selection, appointment, and management of personnel, staff services and record keeping. The
172 chief justice, a justice or a clerk of the medical injury court may submit any dispute that arises
173 between said chief justice or said justice and said clerk of court, concerning the management and
174 administration of the clerk's office, the duties, powers and obligations of the clerk-magistrate or a
175 member of the clerk-magistrate's staff, or the interpretation of the personnel standards provided for
176 under section eight of chapter two hundred and eleven B, to the chief justice for administration and
177 management, who shall, within thirty days, hear and determine the matter. The decision of the chief
178 justice for administration and management shall be binding on the parties.

179 Section 10. The salary of the clerk of the medical injury court department appointed under the
180 provisions of section nine shall be seventy-five and forty-seven hundredths percent of the salary of
181 the chief justice of said department and shall be paid, subject to appropriation, by the
182 commonwealth. The salaries of the first assistant clerk in said department shall be eighty-three and
183 one-half percent of the salary of the clerk of said court and shall be paid, subject to appropriation,
184 by the commonwealth. The salaries of assistant clerks in said department appointed under the
185 provisions of section eleven shall be seventy-seven percent of said clerk's salary and shall be paid,
186 subject to appropriation, by the commonwealth.

187 Section 11. In case of the illness or absence of a clerk, the chief justice of the medical injury court
188 department may appoint a temporary clerk to act until the clerk resumes his duties.

189 Section 12. The clerk of the medical injury court department may appoint 1 or more assistant clerks,
190 who shall be removable at his pleasure. The clerk shall be responsible for all official acts of the
191 assistant clerks and all powers conferred by statute upon the clerk, unless otherwise stated, and in
192 any event subject to limitation by the clerk or the administrative justice, may be exercised by an
193 assistant clerk.

194 Section 13. The clerk, any temporary clerk and all assistant clerks shall be sworn; and in the case of
195 any temporary clerk and of every assistant clerk, the oath of office shall be administered by the
196 chief justice of the medical injury court department who shall, upon administering the same,
197 forthwith make return of such act with the date thereof to the state secretary.

198 Section 14. The clerk, any temporary clerk and every assistant clerk, before entering upon
199 performance of his official duties, and thereafter, at intervals of not more than one year, so long as
200 he continues to hold such office shall give to the commonwealth a bond, conditioned to perform
201 faithfully his official duties, with a surety company, authorized to transact business in the
202 commonwealth as surety, in a sum approved by the chief justice of the medical injury court
203 department, but in no event less than five thousand dollars. Failure to give such bond shall be
204 sufficient cause for his removal.

205 Section 15. The clerk, temporary clerk and assistant clerks shall attend all sessions of the medical
206 injury court department and shall keep a record of all its proceedings. The clerk shall have the care
207 and custody of all the records, books and papers appertaining to, or filed or deposited in, his office.
208 The clerk shall make and issue writs and processes, shall make returns of the medical injury court
209 department, tax bills of costs and receive fines, forfeitures, fees and costs accruing from the civil
210 and criminal business of the medical injury court department including fees for blanks and copies.
211 The clerk shall have such other powers and duties as the chief justice of medical injury court
212 department shall from time to time order.

213 The clerk and assistant clerks of the medical injury court department may sign process issued by the
214 medical injury court department and medical injury court department records, documents or other
215 legal papers or copies thereof made or issued by such other clerk or an assistant clerk in conformity
216 with law, except search warrants and process authorizing arrests or commitments, by imprinting

217 thereon a facsimile of the signature of the clerk or assistant clerk; and such facsimile signatures
218 shall have the same validity as their written signatures.

219 Section 16. The chief justice may appoint such number of court officers for the medical injury court
220 department as he may from time to time determine. Any such court officer may be removed for any
221 cause considered by the chief justice to be sufficient. Any vacancy caused by removal or otherwise
222 may be filled by the chief justice. The court officers shall attend the sessions of the medical injury
223 court department, shall preserve order and may serve warrants, mittimuses, precepts, orders and
224 processes of a division of the medical injury court department. Each court officer shall give bond
225 for the faithful performance of his duties in the sum of one thousand dollars payable to the
226 commonwealth, with sufficient sureties approved by the administrative justice. Each court officer,
227 while on duty in the medical injury court department, shall wear a uniform approved by the
228 administrative justice which shall be furnished at the expense of the commonwealth.

229 Section 17. The chief justice of the medical injury court may appoint, subject to appropriation, such
230 number of medical injury specialists or expert witnesses as he may from time to time determine. All
231 medical injury specialists and expert witnesses shall hold office at the pleasure of said chief justice,
232 subject, however, to retirement under the provisions of any applicable general or special law
233 relative to retirement systems. All medical injury specialists or expert witnesses shall be
234 knowledgeable in the field of medical tort law and the specific area of alleged malpractice in each
235 case. The medical injury specialists or expert witness shall have such powers and perform such
236 duties as said chief justice shall from time to time prescribe. Every medical injury specialist or
237 expert witness shall be sworn by the chief justice of the medical injury court, who shall, upon
238 administering the oath, forthwith make return of such act with the date thereof to the state secretary.

239 An expert providing consultation in medical injury court proceedings shall be certified by the
240 medical injury court department, which shall accept applications from medical professionals to
241 serve as expert witnesses, and certify professionals to provide expert consultation in cases in which
242 individuals have relevant expertise and credentials. An expert witness providing consultation in a
243 medical injury court proceeding shall meet the minimum state requirements for serving as an expert
244 witness, and shall be currently licensed in the same profession as the health care provider against
245 whom a claim has been lodged, and, if certified by a board recognized by the American Board of
246 Medical Specialties, certified in the same specialty or another specialty relevant to the nature of the
247 claim. The provision of consultation as an expert witness in a medical injury court proceeding shall
248 constitute the practice of medicine. An expert in a medical injury court proceeding shall not provide
249 consultation if the expert witness has a material conflict of interest, or for any reason feels that a fair
250 and impartial decision cannot be given. Expert witnesses shall disclose any such reason for
251 disqualification before providing consultation in a medical injury court proceeding.

252 An expert providing consultation in a medical injury court proceeding shall submit a written report
253 of opinion to the medical injury court judge. The written report of opinion shall be based on the
254 expert's review of prior medical injury court explanations of decision, clinical practice guidelines,
255 lists of accelerated compensation events, and other information as appropriate.

256 Section 18. (a) On an annual basis and initially before commencement of operation of the medical
257 injury court, medical injury court judges shall complete an annual training curriculum providing an
258 overview of medical and legal issues that may arise in medical injury court proceedings, as well as
259 developments in clinical medicine and changes to the lists of accelerated compensation events.

260 (b) Training shall address such topics as the use of clinical practice guidelines in medical
261 treatment, assessing the qualifications of independent expert witnesses, and fundamentals of

262 anatomy, pharmacology, pathology, surgical care, and preventive care. Medico-legal issues shall
263 also be addressed.

264 (c) The medical injury court department shall contract with appropriately trained institutions or
265 professionals within the commonwealth, such as medical organizations, schools of medicine or
266 nursing, or other entities providing medical education services, to conduct the training program.

267 Section 19. No clerk, temporary clerk, assistant clerk, medical injury specialist or expert witness
268 shall be retained or employed as an attorney or witness in any complaint, action or suit in any court
269 of the commonwealth.

270 Section 20. At the trial of any issue of fact, the justice presiding at the trial shall provide for a
271 proper recording system which shall record the proceedings. The cost of said recording system shall
272 be paid by the commonwealth upon the certificate of the chief justice for administration and
273 management. Each clerk of the medical injury court department may procure law books and blank
274 books, blanks, stationery and other incidentals required by the divisions of the medical injury court
275 department as the chief justice for administration and management may approve.

276 Section 21. Proceedings shall be commenced in the medical injury court department as follows: a
277 criminal case by complaint in like manner as in the district court department, a civil action in
278 accordance with the Massachusetts Rules of Civil Procedure; provided, however, that a summary
279 process action and a small claims action shall be commenced and administered in accordance with
280 rules promulgated with the approval of the supreme judicial court. Clerks of the medical injury
281 court department shall charge a fee of \$120 for the entry of an action, for the filing of a third-party
282 complaint, and for the filing of a motion to intervene as plaintiff, which shall be paid by the party
283 entering or filing the same; and no other fee shall be charged for taxing costs, for issuing any
284 subpoena or execution or for issuing any order of notice or other mesne, interlocutory or final order,

285 rule, decree of process authorized by law, except a temporary restraining order or preliminary
286 injunction for the issuance of which the clerk shall charge \$90; provided, however, that no fee for
287 the entry of an action or for the issuance of a temporary restraining order or preliminary injunction
288 shall be charged to the commonwealth or political subdivision thereof.

289 Notwithstanding that a proceeding under this chapter is commenced by complaint, if it is found that
290 the offense charged was not willful, intentional, reckless or repeated, the proceeding shall not be
291 deemed criminal and no record of the case shall be entered in the probation records.

292 Section 22. Any civil action within the jurisdiction of the medical injury court department which is
293 pending in another court department may be transferred to the medical injury court department by
294 any party thereto.

295 Whenever cross actions between the same parties or two or more actions, including for the purposes
296 hereof other department proceedings, arising out of or connected with the same medical injury case
297 are pending, one or more in the medical injury court department, the district court department, the
298 probate and family court department, or in the superior court department, the chief justice of the
299 medical injury court upon motion of any party to any of such actions, may order that the action or
300 actions pending in the district court department and in the probate and family court department and
301 in the superior court department with all papers relating thereto, be transferred to the medical injury
302 court department; and such action or actions shall thereafter proceed in the medical injury court
303 department as though originally entered there.

304 Section 23. All cases in the medical injury court department, including motions and the like,
305 whether interlocutory or final, shall be heard and determined by a justice of the medical injury court
306 department sitting without jury, except that in all cases where a jury trial is required by the
307 constitution of the commonwealth or of the United States and the defendant has not waived his

308 rights to a trial by jury, the cause shall be forthwith tried in the medical injury court department
309 before a jury selected in accordance with chapter two hundred and thirty-four. In the trial of any
310 complaint or action in the medical injury court department, the report of any inspector serving in the
311 department of public health or the board of registration in medicine shall be prima facie evidence of
312 the facts stated therein.

313 Section 24. Every judgment or order entered by the medical injury court department shall bear as its
314 date the day when actually entered by the clerk, and at the time of the entry he shall note such date
315 upon the judgment or order and upon the docket.

316 Section 25. The bond of any receiver appointed by the medical injury court department shall be
317 payable to the commonwealth and shall otherwise be in such form as the chief justice of the medical
318 injury court department shall require. Such bond may be enforced in the name of the
319 commonwealth by the treasurer of the commonwealth, or by any person interested therein and
320 authorized by the chief justice of the medical injury court department, after notice to said treasurer,
321 to take such action. The medical injury court department shall have exclusive original jurisdiction
322 of actions on such bonds. Any sums recovered shall be paid over or administered as a justice of the
323 medical injury court department directs.

324 Section 26. There shall be established within the office of patient protection, established pursuant
325 to the provision of section 217 of chapter 111 of the general laws, a searchable electronic database
326 to receive data from the medical injury court relating to claims and decisions pursuant to section 20.
327 Consistent with applicable state and federal law and regulation relating to confidentiality and
328 privacy of health care information, information from this database shall be made available for
329 patient safety analysis to hospital patient safety offices, and to patient safety regulatory authorities,
330 research organizations, and health care purchasing or quality entities. The department of public

331 health shall publish and make available to the public on an annual basis a report summarizing trends
332 in claims.